

## Federal Communications Commission

## § 21.28

21.913 and 74.939(l) of this chapter. Following the publication of a public notice announcing the tendering for filing of applications submitted during that window, applicants shall have a period of sixty (60) days to amend their applications, provided such amendments do not result in any increase in interference to any previously proposed or authorized station, or to facilities proposed during the window, absent consent of the applicant for or conditional licensee or licensee of the station that would receive such interference. At the conclusion of that sixty (60) day period, the Commission shall publish a public notice announcing the acceptance for filing of all applications submitted during the initial window, as amended during the sixty (60) day period. All petitions to deny such applications must be filed within sixty (60) days of such second public notice. On the sixty-first (61st) day after the publication of such second public notice, applications for new or modified response station hub, booster station and I channels point-to-multipoint transmissions licenses may be filed and will be processed in accordance with the provisions of §§ 21.909, 21.913 and 74.939(l) of this chapter. Notwithstanding § 21.31, each application submitted during the initial window shall be granted on the sixty-first (61st) day after the Commission shall have given such public notice of its acceptance for filing, unless prior to such date either a party in interest timely files a formal petition to deny or for other relief pursuant to § 21.30(a), or the Commission notifies the applicant that its application will not be granted. Where an application is granted pursuant to the provisions of this paragraph, the conditional licensee or licensee shall maintain a copy of the application at the transmitter site or response station hub until such time as the Commission issues a license.

[52 FR 37779, Oct. 9, 1987, as amended at 54 FR 10327, Mar. 13, 1989; 60 FR 36552, July 17, 1995; 61 FR 26674, May 28, 1996; 63 FR 65101, Nov. 25, 1998; 64 FR 4054, Jan. 27, 1999]

### § 21.28 Dismissal and return of applications.

(a) Except as provided under paragraph (c) of this section and under § 21.29, any application may be dis-

missed without prejudice as a matter of right if the applicant requests its dismissal prior to designation for hearing or prior to selection of the comparative evaluation procedure of § 21.35. An applicant's request for return of its application after it has been accepted for filing will be considered to be a request for dismissal without prejudice. Requests for dismissal shall comply with the provisions of § 21.29 as appropriate.

(b) A request to dismiss an application without prejudice will be considered after designation for hearing, after selection of the comparative evaluation procedure of § 21.35, or after selection as a tentative selectee in a random selection proceeding, only if:

(1) A written petition is submitted to the Commission and, in the case of applications designated for hearing or comparative evaluation, is properly served upon all parties of record;

(2) The petition is submitted before the issuance date of a public notice of Commission action denying the application; and

(3) The petition complies with the provisions of § 21.29 (whenever applicable) and demonstrates good cause.

(c) Except as provided under § 21.29, an application designated for inclusion in the random selection process may be dismissed without prejudice as a matter of right if the applicant requests its dismissal at least 2 days prior to a random selection proceeding. An applicant's request for return of its application after it has been accepted for filing will be considered to be a request for dismissal without prejudice. Requests for dismissal shall comply with the provisions of § 21.29 as appropriate.

(d) The Commission will dismiss an application for failure to prosecute or for failure to respond substantially within a specified time period to official correspondence or requests for additional information. Dismissal will be without prejudice prior to designation for hearing, selection of the comparative evaluation procedure of § 21.35, or tentative selection by the random selection process, but may be with prejudice for unsatisfactory compliance with § 21.29, or after designation for hearing, selection of the comparative evaluation process, or selection as a

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tentative selectee in a random selection proceeding.

(e) The Commission will dismiss an application filed by a cable television company which fails to comply with the provisions of § 21.912 of this part.

(f) A Multipoint Distribution Service application will be dismissed if the applicant seeks to change ownership or control, except in the case of a *pro forma* change of ownership or control (bankruptcy, death, or legal disability).

[44 FR 60534, Oct. 19, 1979, as amended at 50 FR 5993, Feb. 13, 1985; 55 FR 46009, Oct. 31, 1990; 58 FR 11797, Mar. 1, 1993]

### § 21.29 Ownership changes and agreements to amend or to dismiss applications or pleadings.

(a) Except as provided in paragraph (b) of this section, applicants or any other parties in interest to pending applications shall comply with the provisions of this section whenever:

(1) They participate in any agreement (or understanding) which involves any consideration promised or received, directly or indirectly, including any agreement (or understanding) for merger of interests or the reciprocal withdrawal of applications; and

(2) The agreement (or understanding) may result in either:

(i) A proposed substantial change in beneficial ownership or control (*de jure* or *de facto*) of an applicant such that the change would require, in the case of an authorized station, the filing of a prior assignment or transfer of control application under section 310(d) of the Communications Act of 1934 [47 U.S.C. 310(d)], or

(ii) Proposed withdrawal, amendment or dismissal of any application(s), amendment(s), petition(s), pleading(s), or any combination thereof, which would thereby permit the grant without hearing, comparative evaluation under of § 21.35, or random selection of an application previously in contested status.

(b) The provisions of this section shall not be applicable to any engineering agreement (or understanding) which:

(1) Resolves frequency conflicts with authorized stations or other pending applications without the creation of

new or increased frequency conflicts; and

(2) Does not involve any consideration promised or received, directly or indirectly (including any merger of interests or reciprocal withdrawal of applications), other than the mutual benefit of resolving the engineering conflict.

(c) For any agreement subject to this section, the applicant of an application which would remain pending pursuant to such an agreement will be considered responsible for the compliance by all parties with the procedures of this section. Failure of the parties to comply with the procedures of this section shall constitute a defect in those applications which are involved in the agreement and remain in a pending status.

(d) The principals to any agreement or understanding subject to this section shall comply with the standards of paragraph (e) of this section in accordance with the following procedure:

(1) Within ten (10) days after entering into the agreement, the parties thereto shall jointly notify the Commission in writing of the existence and general terms of such agreement, the identity of all of the participants and the applications involved;

(2) Within thirty (30) days after entering into the agreement, the parties thereto shall file any proposed application amendments, motions, or requests together with a copy of the agreement which clearly sets forth all terms and provisions, and such other facts and information as necessary to satisfy the standards of paragraph (e) of this section. Such submission shall be accompanied by the certification by affidavit of each principal to the agreement declaring that the statements made are true, complete, and correct to the best of their knowledge and belief, and are made in good faith.

(3) The Commission may request any further information which in its judgment it believes is necessary for a determination under paragraph (e) of this section.

(e) The Commission will grant an application (or applications) involved in the agreement (or understanding) only